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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

MAR - 3 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) PR Docket No. 94-105

Petition of the People of the)
State of California and the)
Public Utilities Commission of)
the State of California to)
Retain State Regulatory)
Authority over Intrastate)
Cellular Service Rates)

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SUPPLEMENTAL REPLY COMMENTS OF THE CELLULAR CARRIERS
ASSOCIATION OF CALIFORNIA REGARDING THE UNREDACTED
INFORMATION SUBMITTED BY THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

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SUMMARY

The CCAC has detected the very same errors in economic analysis and reasoning in the supplemental comments of the Resellers as have been previously identified in the CPUC Petition itself. Accounting rates of return, utilization of individual cell sectors and an obsessive preoccupation with basic rates have all been used to reach erroneous conclusions. Both the CPUC and the Resellers continue to turn a blind eye to the rates cellular subscribers actually pay in the competitive California market, as reflected in the rapidly expanding array of discounted rate plans, which are used by an ever larger majority of California subscribers.

Finally, the Resellers hold themselves out as the crucial competitive balance for the cellular carriers. They represent no such thing. Both the CPUC itself and the Federal Trade Commission have concluded that resellers have not provided effective retail competition.

The Commission should reject the Resellers' arguments and the CPUC Petition in order to ensure uniform nationwide regulation of the cellular industry--a regulatory framework which relies on existing and future competition, not on command and control regulation.

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Pursuant to the Order issued by the Wireless Radio
Bureau of the Federal Communications Commission (FCC) on
February 9, 1995,¹ (hereinafter referred to as the "Second
Confidentiality Order") the Cellular Carriers Association of
California ("CCAC") hereby submits its supplemental reply
comments regarding issues raised by the unredacted confiden-

¹ Order, PR Docket Nos. 94-103, 94-105, 94-106, 94-108,
DA 95-208, adopted Feb. 9, 1995, released Feb. 9, 1995
(Second Confidentiality Order)

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tial information submitted by the Public Utilities Commission of the State of California (CPUC) in the above-docketed proceeding in support of its Petition to retain state regulatory authority over intrastate cellular service rates. Specifically, CCAC replies to the comments filed jointly by three parties, the Cellular Resellers Association, Inc., Cellular Service, Inc., and ComTech Mobile Telephone Company, hereinafter referred to collectively as "Resellers".

I.

RESELLERS' ARGUMENTS REGARDING CAPACITY UTILIZATION, RETURNS, AND RATES ARE UNSUPPORTED BY EITHER EVIDENCE IN THE RECORD OR COMMON SENSE

The Resellers believe it would be "misguided" to examine the "minutia" in carriers' rate plans, apparently because they are aware that a detailed examination of the unredacted data in Appendix J of the CPUC Petition disproves their arguments. For example, the Resellers continue to imply that the only cellular rates in California which the Commission need examine are basic rates. In support of this assertion, the Resellers make the absurd argument that, "although the percentage of subscribers using the basic rate plans has decreased, the number of subscribers using the basic rate plans has increased dramatically." Resellers Comments at 3. Left unsaid is the arithmetic truth that if almost ____ of subscribers in the

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major markets² were using discounted rate plans in 1993, the number of subscribers using discounted plans has been increasing far more dramatically than the number of subscribers on basic plans. Thus, although the Resellers point out that the number of BACTC's retail subscribers on its basic rate plan increased by 28,372 from 1989 to 1993, they fail to mention that the number of BACTC retail subscribers on a discounted rate plan grew by 73,467 during the same period, increasing from 5,726 in 1989 to 79,193, a growth rate of 1283 percent.

Try as they might, the Resellers cannot escape the fundamental fact that the rates that matter in California, and which both the CPUC and the Resellers have completely failed to analyze quantitatively, are the discounted rates offered by carriers. These discounted plans have provided the overwhelming majority of cellular customers with rates significantly below basic rates, which even the CPUC concedes have fallen _____ in real terms over the 1989-1993 time period.

Unredacted Petition at 34.

The Resellers attempt to gloss over the fact that "many, if not most" subscribers now utilize discount plans by arguing that such plans typically require "a certain amount of use" and leave a substantial number of subscribers paying "inordi-

² CCAC Supplemental Comments, filed February 24, Table 1, pp. 8-9.

nately high prices." This twisted logic is difficult to unravel, but if the Resellers are contending that a minimum usage requirement for a discounted plan causes customers to pay more for cellular service than they would under a basic rate plan, this is plainly false.

The minimum usage issue is a red herring. Whether a customer uses his or her phone a little or a lot, and whether or not there is a minimum usage built into the plan, discount plans compare favorably with the basic rate plans. For example, using the discounted rate plans of Bay Area Cellular Telephone Company (BACTC), chosen because it was cited by the Resellers in their comments, CCAC compared the cost per minute of usage for 60, 120, and 480 minutes of use. For each level of usage there is at least one BACTC plan, and at the highest level of usage there are four plans, for which the cost per minute was lower than that resulting from the basic rate. Unredacted Petition, Appendix J. It is wrong to imply, as the Resellers do, that only high-volume users benefit from discounted rate plans.

The Resellers' arguments regarding the returns earned by cellular carriers are also unavailing. As explained by Charles River Associates in the affidavit submitted with CCAC's supplemental comments, these arguments contain the same flaws identified in the initial CPUC Petition. First,

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accounting rates of return are not valid for determining the presence or absence of monopoly profits. Second, the CPUC's return calculations, parroted by the Resellers, ignore the opportunity cost of employing scarce electromagnetic spectrum in the production of cellular service and understates carriers' actual investments in spectrum. Third, any attempt to conclude that excessive returns have been earned as a result of the exercise of market power is contradicted by the far lower returns earned by medium and small market carriers. See Supplemental Comments of CCAC, Affidavit of Besen, Larner and Murdoch, p. 3.

The Resellers have attempted to distinguish large and medium market returns by the length of time carriers have held Commission-granted licenses. Nowhere do the Resellers provide any logical explanation as to why holding a cellular license 11 or 12 years enables a carrier to earn far larger accounting rates of return than holding a license for 9 or 10 years. The very notion is nonsensical. If carriers are exercising inordinate but similar market power, it should be apparent over a decade of time. Yet even though the same level of market concentration (and apparent market power) are approximately the same across these markets, large and medium market carriers earn different returns. Unredacted Petition, Appendix F. Other factors such as economies of scale and

significantly different levels of demand for cellular service (and hence scarcity value of spectrum) are at work--not market power. The Resellers have completely failed to provide a logical link between the accounting rates of return and their allegation of market power abuse.

Most incredible are the Resellers' comments about capacity utilization. The Resellers cite the Los Angeles Cellular Telephone Company (LACTC) data in the CPUC Petition as proof that the demand for cellular service cannot justify either the rates charged by LACTC, or the returns earned. Resellers Comments at 4. However, the existence of excess capacity in any meaningful sense cannot be inferred from the CPUC's data in Appendix M, which measures capacity at the individual cell sector, not for the system as a whole.

For a cellular market the size of LACTC's, which includes densely populated regions separated by deserts and mountains, it is absolutely inconceivable to assert, as the Resellers do, that the existence of some cell sectors which are not at full capacity is proof that the entire LACTC system is underutilized and that there is no evidence of strong demand for cellular service. LACTC could not even begin to provide acceptable quality service to its customers given the enormous range of its territory and the extreme mobility of its customers without siting cells in locations which span the

distances between population centers. The cell sectors in these isolated regions will never be used as frequently as those in downtown LA. Not only does this fact not support the Resellers' conclusion about system utilization, it is also essentially meaningless (as is all the CPUC capacity utilization data relied upon by the Resellers) because the Resellers fail to present any standard picture of efficient or desirable system-wide utilization. See CCAC Supplemental Comments, Affidavit of Besen, Larner and Murdoch at 6.

II.

RESELLERS DO NOT PROVIDE TRUE RETAIL COMPETITION IN THE CELLULAR MARKET, YET COMPETITION ABOUNDS IN CALIFORNIA

As CCAC has noted in previous filings, Resellers do not provide true retail competition in the cellular market. This is not merely the assertion of CCAC, but the position of both the CPUC and an agency of the federal government. Indeed, the CPUC itself concluded that resellers have been ineffective in enhancing competition in the cellular market.³ This opinion is shared by the Bureau of Economics of the Federal Trade Commission, which offered the following comments in the FCC's own proceeding on bundling:

In contrast [to the intraLATA market], no similar source of wholesale competition to the facilities-based cellular licensees exists, so the cellular

³ I.93-12-007, p. 15.

reseller cannot serve the same procompetitive function as the intraLATA reseller.

* * *

Furthermore, given the competitive state of the retail cellular market, it is unclear what marginal contribution resellers make in the retail market. Resellers currently compete with a large number and variety of retail outlets in a competitive retail market, and it seems unlikely that their absence would result in a reduction in competition at the retail level.⁴

Unaddressed by the FTC Comments was the now-imminent licensing of multiple Personal Communications Services (PCS) providers in each California market.

The fundamental decision before the Commission is whether to commit the single most competitive cellular market in the United States to continued command and control regulation by the State of California⁵ or to encourage the existing level of competition in California, as reflected in a steady decline in real cellular rates of all types. If the Commission chooses the second course, it can do so secure in the knowledge that

⁴ Comment of the Staff of the Bureau of Economics of the Federal Trade Commission, filed July 31, 1991, In the Matter of Bundling of Cellular Customer Premises Equipment and Cellular Service, CC Docket No. 91-34, p. 13.

⁵ If the Petition were granted, the ultimate term of California's regulation over cellular rates would have to be considered indefinite, as the CPUC has never committed itself to refrain from seeking extensions of regulatory authority beyond the 18 months requested in its Petition.

even greater competition in California is soon to arrive in the form of well-financed and aggressive PCS providers, who are even now bidding hundreds of millions of dollars to secure licenses in California markets.

Is there a federal policy which calls for severely handicapping the cellular carriers who have successfully constructed a wireless industry in California? Is there an overriding federal interest in sending the signal that cellular carriers in California should continue to bear the delays and restrictions on cell siting, new service offerings and potentially even greater regulatory sanctions⁶ while their counterparts in other states are unregulated and their PCS competitors are free from CPUC regulation? If so, the CPUC Petition should be granted.

If, on the other hand, the Commission seeks to foster further development of the cellular infrastructure in the nation's most populous state, it should deny the California Petition. If the Commission is willing to rely on the forces of competition to govern cellular service in at least 42 states, and perhaps as many as 49 other states, there is no reason for a different approach to California and the Commis-

⁶ In Decision 94-08-022 the CPUC signaled its intention to consider imposing rate rollbacks on cellular carriers to correct what it considered excessive rates of return. D.94-08-022, Aug. 3, 1994 at 70.

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sion should deny the California Petition. The Commission should ensure that a uniform federal policy supports the development of the nation's wireless communications system and avoids creating zones of "regulatory blight" where cellular carriers face an entirely different level of regulation than either their PCS competitors or cellular carriers in other states. Such a fragmented pattern of regulation will clearly inhibit the further development of national wireless networks.

III.

CONCLUSION

The Resellers have merely repeated the same flawed arguments advanced by the CPUC in this Docket. Their supplemental

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comments provide the Commission with no basis for approving the CPUC Petition and the Commission should deny the Petition promptly following the closing of the record in this case.

Respectfully submitted,

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Dated: March 3, 1995


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CERTIFICATE OF SERVICE

I, Abby Ovitsky, certify that I have this date caused the foregoing SUPPLEMENTAL REPLY COMMENTS OF THE CELLULAR CARRIERS ASSOCIATION OF CALIFORNIA REGARDING THE UNREDACTED INFORMATION SUBMITTED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA to be served by United States mail on the parties of interest in PR Docket No. 94-105 as set forth on the attached service list.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on March 3, 1995 at San Francisco, California.


Abby Ovitsky 